

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHFL ENTERTAINMENT, INC., a Minnesota corporation,) Case No.: 2:12-cv-01782-GMN-VCF
Plaintiff,)
vs.) **ORDER**
DIGIDEAL CORPORATION, a Nevada corporation,)
Defendants.)

Pending before the Court is the Motion to Set Aside Clerk's Entry of Default (ECF No. 36) filed by Defendant Digideal Corporation ("Defendant"). Plaintiff SHFL Entertainment, Inc. ("Plaintiff") filed a Response (ECF No. 42) and Defendant filed a Reply (ECF No. 44).

Also pending before the Court is the Motion for Default Judgment (ECF No. 43) filed by Plaintiff. Defendant filed a Response (ECF No. 45) and Plaintiff filed a Reply (ECF No. 48).

Finally, pending before the Court is the Motion for Hearing re: Motion for Default Judgment (ECF No. 46) filed by Defendant. Plaintiff filed a Response (ECF No. 47) and Defendant filed a Reply (ECF No. 49).

I. BACKGROUND

Plaintiff commenced the instant action on October 10, 2012, when it filed its Complaint. (Compl., ECF No. 1.) In its Complaint, Plaintiff claims that Defendant infringes two United States patents of which Plaintiff is the sole owner. (*Id.* ¶¶ 6-7.) Specifically, Plaintiff alleges that Defendant infringes United States Patent Nos. 6,651,982, entitled “Card Shuffling Apparatus With Integral Card Delivery” and United States Patent No. 7,523,935 also entitled “Card Shuffling Apparatus With Integral Card Delivery.” (*Id.*)

1 In response to Plaintiff's Complaint, on December 3, 2012, Defendant filed a Motion to
2 Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 10.)
3 Thereafter, on December 10, 2012, Plaintiff filed an Emergency Motion to Disqualify
4 Defendant's Counsel of Record, Richard H. Newman ("Newman") and the law firm Howard &
5 Howard. (ECF No. 15.) In that motion Plaintiff requested that Newman be disqualified as
6 defense counsel because of his previous employment with Plaintiff SHFL, as in-house counsel
7 for intellectual property. (Mot. to Disqualify 5:1-8:2, ECF No. 15.) Defendant opposed
8 Plaintiff's motion to disqualify. (ECF No. 20.) On January 16, 2013, Magistrate Judge
9 Ferenbach granted Plaintiff's Motion to Disqualify. (ECF No. 27.) At that point, Defendant
10 was without counsel. However, Judge Ferenbach's Order did not set a deadline by which
11 Defendant was required to obtain new counsel. (*See* ECF No. 27.)

12 On February 7, 2013, approximately three weeks after Judge Ferenbach entered his
13 Order disqualifying Defendant's counsel, Plaintiff filed a Motion for Entry of Clerk's Default.
14 (ECF No. 28.) Two weeks later, on February 21, 2013, attorney Marie W. Martin-Kerr entered
15 an appearance on behalf of Defendant. (ECF No. 29.) On that same day, Defendant filed a
16 Response in opposition to Plaintiff's Motion for Entry of Default. (ECF No. 32.) On March 4,
17 2013, Plaintiff filed its Reply to Plaintiff's opposition. (ECF No. 33.) Despite Defendant's
18 opposition, the Clerk of Court entered default on March 6, 2013, due to a clerical error. (ECF
19 No. 34.)

20 On March 7, 2013, the day following the Clerk's Entry of Default, Defendant filed the
21 instant Motion to Set Aside Clerk's Entry of Default. (ECF No. 36.) Plaintiff opposes this
22 motion. (ECF No. 42.) Additionally, on March 25, 2013, Plaintiff filed a Motion for Default
23 Judgment. (ECF No. 43.) Finally, on April 15, 2013, Defendant filed a Motion for Hearing re:
24 Motion for Default Judgment. (ECF No. 46.)

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1 **II. LEGAL STANDARD**

2 Rule 55(a) of the Federal Rules of Civil Procedure provides that “[w]hen a party against
3 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and
4 that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”
5 Furthermore, under Rule 55(c), “[t]he court may set aside an entry of default for good
6 cause . . .” Fed. R. Civ. P. 55(c). “To determine ‘good cause’, a court must ‘consider[] three
7 factors: (1) whether [the party seeking to set aside the default] engaged in culpable conduct that
8 led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the
9 default judgment would prejudice’ the other party.” *United States v. Signed Pers. Check No.*
10 *730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (citation omitted). A
11 determination that one of these three factors is present “is sufficient reason for the district court
12 to refuse to set aside the default.” *Id.* However, a clerk’s entry of default is “void *ab initio*” if
13 the purported defaulting party actually appeared in the action. *Franchise Holding II, LLC v.*
14 *Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927 (9th Cir. 2004) (citation omitted). Above all,
15 “judgment by default is a drastic step appropriate only in extreme circumstances; a case should,
16 whenever possible, be decided on the merits.” *Signed Pers. Check No. 730 of Yubran S. Mesle*,
17 615 F.3d at 1091 (citation omitted).

18 **III. DISCUSSION**

19 In this case, the Court finds good cause to set aside the Clerk’s Entry of Default against
20 Defendant. Specifically, Defendant cannot be said to have failed to defend itself as required by
21 Rule 55(a) because Defendant filed a Motion to Dismiss on December 3, 2012, more than two
22 months before Plaintiff filed its Motion for Clerk’s Entry of Default. Defendant also
23 vigorously opposed Plaintiff’s later filed Emergency Motion to Disqualify Defendant’s Counsel
24 of Record. It was not until three weeks after Defendant’s attorney was disqualified that
25 Plaintiff sought the Clerk’s Entry of Default. Defendant’s absence continued for approximately

1 thirty-five days after its attorney was disqualified, during which Defendant was working on
2 retaining replacement counsel. For these reasons, the clerk's entry of default in this case is
3 "void *ab initio*"; Defendant repeatedly appeared to defend itself in this action prior to the entry
4 of default.

5 Plaintiff argues that Defendant "failed to defend itself by ignoring the Court's January 3,
6 2013 Order to participate in a Rule 26(f) Conference." (Pl.'s Resp. 1:17-18, ECF No. 42.)
7 However, even if Defendant did violate a court order, clerk's entry of default is not the
8 appropriate remedy. As stated in Rule 55(a), a clerk's entry of default is appropriate only when
9 a party fails to plead or otherwise defend. This condition is not met here. Accordingly,
10 Plaintiff's near frivolous arguments opposing Defendant's Motion to Set Aside the Clerk's
11 Entry of Default are unavailing and Defendant's Motion (ECF No. 36) is GRANTED.
12 Furthermore, because the Court is setting aside the Clerk's Entry of Default, Plaintiff's Motion
13 for Default Judgment (ECF No. 43) and Defendant's Motion for Hearing on Plaintiff's Motion
14 for Default Judgment (ECF No. 46) are DENIED as MOOT.

15 **IV. CONCLUSION**

16 **IT IS HEREBY ORDERED** that the Motion to Set Aside Clerk's Entry of Default
17 (ECF No. 36) filed by Defendant Digideal Corporation is **GRANTED**.

18 **IT IS FURTHER ORDERED** that the Motion for Default Judgment (ECF No. 43)
19 filed by Plaintiff SHFL Entertainment, Inc. is **DENIED as moot**.

20 **IT IS FURTHER ORDERED** that the Motion for Hearing re: Motion for Default
21 Judgment (ECF No. 46) filed by Defendant Digideal Corporation is **DENIED as moot**.

22 **DATED** this 9th day of May, 2013.

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Gloria M. Navarro
United States District Judge